

July 2014

Revised Tax Credit Assistance Program (TCAP) Policies and Procedures Manual



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The American Recovery and Reinvestment Act of 2009 created the Tax Credit Assistance Program (“TCAP”) to enhance the Section 42 Rental Housing Tax Credit program.

The Indiana Housing and Community Development Authority (“IHCDA”) administered the distribution of the State’s \$38,048,333 in TCAP funding. IHCDA has begun to receive repayment of these funds and is updating the Recycled Funds Policy originally issued on May 2, 2012.

IHCDA intends to offer TCAP loans for the following activities:

- Up to \$5,000,000.00 per development to rental housing tax credit developments as construction loans or equity bridge loans to enhance development strength and encourage investment from traditional syndicator and investor sources.
- Up to \$200,000.00 per development to not-for-profit organizations as predevelopment loans related to predevelopment costs of a rental housing tax credit development. IHCDA will make a maximum of \$3,500,000.00 of its total TCAP funds available for predevelopment awards.

Terms used in this TCAP Policy will have the same meaning as used in IRS Code Section 42, federal regulations, IHCDA’s Qualified Allocation Plan (“QAP”), and legal agreements between the IHCDA and Owners.

Part 1: Construction and Bridge Loans

Section 1: Threshold Requirements, Eligible Uses, Application Process, and Selection Criteria

1.1.1. Threshold Eligibility – Construction and Bridge Loans

- A. To qualify for a TCAP construction or bridge loan, the Development must meet one of the following set-aside categories under the QAP:
 - i. Rural;
 - ii. Small City; or
 - iii. Housing First.
- B. The Development must have an award of 9% tax credits from IHCDA and require additional funding to be completed and placed-in-service. For purposes of the TCAP Criteria, “award” means one of the following:
 - i. A reservation of credits approved by IHCDA Board of Directors; or
 - ii. A fully executed Carryover Agreement.
- C. The Development must have an equity commitment, including financial projections.

- D. The Development must demonstrate that it continues to meet the QAP's Criteria for Approval including: marketability, overall financial feasibility, viability, experience of the development team, and no outstanding noncompliance issues for existing developments.
- E. Applicant/Owner/Developer may not have an outstanding TCAP loan balance.
- F. Applicant/Owner/Developer must be in good standing with IHCD – i.e. may not currently be suspended or debarred and must currently be in compliance on other IHCD funded properties.
- G. TCAP construction or bridge loan request may not exceed \$5,000,000.00.

1.1.2. Eligible Uses of Funds

TCAP construction and bridge loan funds may be used for capital investments in eligible rental housing tax credit developments. Capital investments are costs that are included in the eligible basis of a development under Section 42 of the IRC.

The TCAP assistance provided to a development is subject to the same limitations (including rent and income limits, use restrictions and compliance monitoring) as required by IHCD with respect to an award of rental housing tax credits to a development (i.e. as required under Section 42 of the IRC and its implementing regulations).

1.1.3. Application Process Requirements

- A. Eligible applicants may apply to IHCD at any time after obtaining an equity commitment.
- B. Applicants are required to submit:
 - i. IHCD TCAP application;
 - ii. \$500.00 application fee;
 - iii. Amount requested;
 - iv. Current sources and uses;
 - v. Anticipated closing date;
 - vi. Anticipated construction and completion schedule;
 - vii. Explanation of the TCAP request in terms of filling the gap caused by syndicator/investor's proposal or requirements as compared to the most recent rental housing tax credit application; and
 - viii. Documentation/description of readiness criteria.
- C. The Development must meet the Threshold Eligibility Requirements.

1.1.4. Selection Criteria

- A. IHCDCA will evaluate, prioritize and award TCAP funds to developments based on the following criteria:
- i. Meet the all of the threshold eligibility and application process requirements.
 - ii. Owner's ability to close on all financing within 90 days of the TCAP award. IHCDCA's "Readiness Criteria" is determined by the following:
 - a. The anticipated building timelines, including any challenges (e.g. extensive site work);
 - b. Owner's and general contractor's recent history of timely construction;
 - c. Executed construction contract;
 - d. Building permit or documentation of status approval;
 - e. State approval of plans and specifications;
 - f. Site Plan Approval by locality;
 - g. Secure construction loan; and
 - h. Completed engineering and final construction drawings.
- B. IHCDCA will review each request based on the materials submitted and deny TCAP funding to those who, in IHCDCA's sole judgment, are unable to meet the criteria. IHCDCA maintains the right to commit TCAP funds due to unforeseen circumstances if such commitment will further the housing priorities stated in IHCDCA's QAP, and is determined to be in the best interest of the citizens of the State of Indiana. All TCAP award results will be posted on IHCDCA's website and be made available to the public.

Section 2: Loan Terms and Underwriting Provisions

1.2.1. Underwriting Requirements

All underwriting requirements of the most recently accepted rental housing tax credit application shall remain in force, except changes to sources and uses mandated by an investor's commitment and approved by IHCDCA if, in IHCDCA's sole judgment, they are deemed reasonable.

1.2.2. Development Fee

- A. The inclusion of development fees must be supported by a development services agreement that recites in reasonable detail the development services provided, sets forth a schedule for accrual of the development fee as specified benchmarks are achieved, and clearly identifies the terms for payment of the fee.

- B. The inclusion of other fees to service providers must be supported by evidence that the services: (A) were actually performed, and (B) were not duplicative of the services for which the development fee is being paid (or for which, in a customary transaction, the development fee would be paid).
- C. Other fees will not be paid to entities related to the General Partner or the Developer except where the General Contractor is a related party and is entitled to general overhead, builder profit, and general requirements.
- D. The Development will be subject to the following deferred developer fee requirements:
 - i. 50% of the developer fee will be deferred and payable upon project completion.
 - ii. An applicant may request a waiver (see Part 4.1 below) of the deferred developer fee requirement. However, developments that propose to defer less than 50% of the developer fee will be subject to a higher interest rate on the TCAP loan.

1.2.3. Loan Terms

- A. TCAP funds can be used as a construction loan and/or bridge loan.
- B. TCAP funding Construction Loan Terms will be for the financing of development cost related to construction or rehabilitation. Loans will carry an interest rate starting at 3% with a term not to exceed twenty-four (24) months, interest only.
- C. Construction financing will have full recourse against the borrower.
- D. A portion of a TCAP construction loan may remain in the development as a bridge loan for up to an additional 24 months.
- E. IHCD A will agree to subordinate the TCAP loan in priority to the lender in first lien position.
- F. IHCD A shall disburse TCAP funds at closing or during construction as needed upon receiving evidence that costs have been incurred.
- G. See “Exhibit A: Summary of Loan Products and Terms” for more details on loan terms.

1.2.4. TCAP Written Agreements and Disbursements

IHCD A must execute a legally binding written agreement with each project owner. The written agreement will set forth all of the TCAP program requirements applicable to the funding, and must make these requirements enforceable through the recordation of a restriction that is binding on all owners and successors, e.g., a Lien and Extended Use Agreement.

Below is a list of all documents that must be executed:

- A. Loan Agreement;
- B. Note;
- C. Mortgage;
- D. Security Agreement;
- E. Guaranty;
- F. Cooperation Agreement; and
- G. Lien and Extended Use Agreement

1.2.5. Post Award: Timelines and Noncompliance with Terms

- A. Owners who do not close on their financing and TCAP award within ninety (90) days of the TCAP award will be de-obligated and will not be eligible to reapply for TCAP funds until sixty (60) days from the date of de-obligation.
- B. TCAP Funding Commitments (“the Commitment”) will specify construction schedules. If an Owner fails to expend TCAP funds according to the Commitment’s construction schedule, IHCDCA will assess. Depending on the circumstances, IHCDCA may allow the Owner an opportunity to remedy the situation.
- C. Remedies for loan default or other noncompliance may include IHCDCA having the ability to do some or all of the following:
 - i. Declare recipients not in good standing;
 - ii. In conjunction with the equity investor, change the structure of the ownership entity, including adding or removing members/partners;
 - iii. In conjunction with the equity investor, replace the management company;
 - iv. Initiate foreclosure proceedings; and/or
 - v. Other remedies as determined appropriate by IHCDCA.

Section 3: Affordability Periods and Compliance Requirements

1.3.1. Affordability Period

All developments are subject to a thirty (30) year affordability period. The Owner must record a thirty (30) year Lien and Extended Use Agreement against the property.

1.3.2. Reporting and Tax Credit Compliance

- A. Progress Reports: Owners will report to IHCD, no less than quarterly on the day preceding the end of such quarter:
 - i. Description of the development, and
 - ii. Evaluation of the completion status.
- B. Owners must follow IHCD's compliance requirements, processes, and procedures as applicable to Section 42 rental housing tax credit developments, as outlined in IHCD's *Rental Housing Tax Credit Compliance Manual* as amended annually. This includes online reporting requirements and cooperation with IHCD file audits and physical inspections.
- C. Non-compliance with TCAP policies and procedures contained herein will subject development's award to recapture.
- D. Non-compliance with TCAP policies and procedures can negatively affect future LIHTC reservations from IHCD and may result in the Applicant, Owner, Developer, and/or Management Company being placed on IHCD's suspension or debarment list.

1.3.3. Fair Housing: Non-discrimination & Accessibility Requirements

Owners and developments must comply with all of the following:

- A. Owners must comply with the non-discrimination requirements of the federal Fair Housing Act (42 U.S.C. 3601-19 and the implementing regulations at 24 CFR Part 100 24 CFR Part 107) and the Violence Against Women Reauthorization Act of 2013.
- B. Accessibility:
 - i. The Federal Fair Housing Act Amendments of 1988 establishes the following seven design standards for all newly constructed multi-family housing of four or more units ready for first occupancy on or after March 13, 1991 (See 24 CFR 100.205). The housing is not covered if the last building permit was issued prior to June 15, 1990, or if the site is determined to be impractical:
 - a. At least one building entrance must be on an accessible route.
 - b. All public and common areas must be readily accessible to and usable by people with disabilities.
 - c. All doors providing passage into and within all premises must be sufficiently wide for use by persons in wheelchairs.
 - ii. Additionally, all ground floor units and all units on floors served by elevators must have:

- a. An accessible route into and through the dwelling.
- b. Accessible light switches, electrical outlets, thermostats, and other environmental controls.
- c. Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, and shower, when needed.
- d. Kitchens and bathrooms configured so that a person using a wheelchair can maneuver in the space.

Section 4: Waivers and Modifications

1.4.1. Requesting Waivers

IHCDA, in its sole discretion, may consider a waiver request from any Applicant/Developer in regards to any program requirement outlined within this policy. The Applicant must submit the waiver request along with the original application. The waiver request must include:

- A. The details of the specific requirement for which the waiver is being requested;
- B. A detailed description as to why the requirement cannot be met;
- C. Any additional information the Applicant would like IHCDA to consider with the request, and
- D. Payment of the waiver request fee in the amount of \$500.00 for each requirement requested to be waived.

IHCDA will provide a written response approving or denying the request. The waiver request fee will be retained by IHCDA regardless of whether the waiver is granted.

1.4.2. Requesting Modifications

IHCDA will impose a \$500.00 fee for a request for changes to the characteristics of the development, such as unit types, distribution, or targeting (e.g. set-asides). A modification fee will also be imposed for a request to change loan terms from those in the original executed letter of intent. This fee will apply to any modification requested after approval of funding.

In addition, IHCDA will impose a \$1,500.00 fee to modify any legal documents including but not limited to the note, loan agreement, the recorded Lien and Extended Use Agreement, etc.

For example, if an owner requests a modification to change the number of 30% set-aside units at the property during the affordability period, the owner would submit a \$500.00 modification request fee and then, if approved, an additional \$1,500.00 fee to have IHCDA modify the recorded Lien and Restrictive Covenant on the property to reflect the new unit

mix. The total modification cost is \$2,000.00. If the modification does not require amending the legal documents, then the \$1,500.00 fee would not apply.

Approval of modification requests is at the sole discretion of IHCD. IHCD must evaluate each request to see how the change would have affected original funding and underwriting of the development, as well as to ensure that the proposed change will not cause noncompliance.

Part 2: Predevelopment Loans

Section 1: Threshold Requirements, Eligible Uses, Application Process, and Selection Criteria

2.1.1. Threshold Eligibility-Predevelopment Loans

- A. To qualify for a predevelopment loan, the Applicant must have an award of 9% tax credits and qualify under the qualified not-for-profit set-aside.
- B. Applicant/Owner/Developer may not have an outstanding TCAP loan balance.
- C. Applicant/Owner/Developer must be in good standing with IHCD – i.e. may not currently be suspended or debarred and must currently be in compliance on other IHCD funded properties.
- D. TCAP predevelopment loan request may not exceed \$200,000.00.

2.1.2. Eligible Uses of Funds

TCAP funds may be used as predevelopment loans to not-for-profit organizations. Eligible activity costs include:

- A. Costs associated with conducting a feasibility analysis and market study of the proposed activity;
- B. Professional fees such as legal, architectural, engineering, etc. to render development details;
- C. Title search;
- D. Option(s) to purchase property (acquisition is NOT eligible); and/or
- E. Payment of necessary fees, such as appraisals, permits, bonding, and credit checks.

2.1.3. Application Process

- A. Eligible applicants may apply to IHCD at any time.

B. Applicants are required to submit:

- i. IHCD A TCAP Pre-Development Loan Application;
- ii. \$500.00 application fee;
- iii. Amount requested;
- iv. Detailed pre-development budget uses for the loan;
- v. Current sources and uses;
- vi. Anticipated closing date;
- vii. Anticipated construction and completion schedule;
- viii. Explanation of the TCAP request; and
- ix. Documentation/Description of readiness criteria.

C. The Development must meet the Threshold Eligibility Requirements outlined above.

2.1.4. Selection Criteria

A. IHCD A will evaluate, prioritize and award TCAP funds to developments based on the following criteria:

- i. Meet all the above threshold eligibility and application process requirements; and
- ii. Demonstrated financial capacity to repay the loan.

B. IHCD A will review each request based on the materials submitted and deny TCAP funding to those who, in IHCD A's sole judgment, are unable to meet the criteria. IHCD A maintains the right to commit TCAP funds due to unforeseen circumstances if such commitment will further the housing priorities stated in IHCD A's QAP, and is determined to be in the best interest of the citizens of the State of Indiana. All TCAP award results will be posted on IHCD A's website and be made available to the public.

Section 2: Loan Terms and Underwriting Provisions

2.2.1. Underwriting Requirements

Underwriting for all pre-development loans will adhere to underwriting guidelines outlined in the IHCD A 2014-2015 Qualified Allocation Plan. Additionally, applicant must demonstrate sufficient financial ability to secure and repay loan.

2.2.2. Loan Terms

- A. TCAP pre-development funds will be available for the financing of pre-development costs related to construction or rehabilitation of affordable rental housing. Eligible uses of loan proceeds are described in Section 1.3 of this Part.
- B. TCAP pre-development loans will carry an interest rate of 5%.
- C. The term of the pre-development loan is not to exceed 24 months with annual interest only payments.
- D. Pre-development financing will have full recourse against the borrower.
- E. Pre-development loans (principal amount plus any accrued interest) must be repaid in full at time of construction loan closing or twenty-four (24) months, whichever is sooner.
- F. IHCD shall disburse TCAP funds at closing and/or during pre-development term on as monthly basis upon receiving claim request and proper evidence that costs have been incurred.
- G. See “Exhibit A: Summary of Loan Products and Terms” for more details on loan terms.

2.2.3. TCAP Written Agreements and Disbursements

Each project owner must execute a legally binding written agreement with IHCD. The written agreement will set forth all of the TCAP program requirements applicable to the funding. Below is a list of all documents that must be executed:

- A. Loan Agreement;
- B. Mortgage;
- C. Security Agreement;
- D. Guaranty; and
- E. Cooperation Agreement.

2.2.4. Post Award: Timelines and Noncompliance with Terms

- A. Owners who do not close on their TCAP award within ninety (90) days of the TCAP award will be de-obligated and will not be eligible to reapply for TCAP funds until sixty (60) days from the date of de-obligation.
- B. Remedies for loan default or other noncompliance may include IHCD having the ability to do some or all of the following:
 - i. Declare Applicant/Developer/Owner not in good standing;
 - ii. Initiate foreclosure proceedings; and/or

- iii. Other remedies as determined appropriate by IHCD.

Section 3: Waivers and Modifications

2.3.1. Requesting Waivers

IHCDA, in its sole discretion, may consider a waiver request from any Applicant/Developer in regards to any program requirement outlined within this policy. The Applicant must submit the waiver request along with the original application. The waiver request must include:

- A. The details of the specific requirement for which the waiver is being requested;
- B. A detailed description as to why the requirement cannot be met;
- C. Any additional information the Applicant would like IHCD to consider with the request, and
- D. Payment of the waiver request fee in the amount of \$500 for each requirement requested to be waived.

IHCDA will provide a written response approving or denying the request. The waiver request fee will be retained by IHCD regardless of whether the waiver is granted.

2.3.2. Requesting Modifications

IHCDA will impose a \$500.00 modification fee for a request to change loan terms from those in the original executed letter of intent. This fee will apply to any modification requested after approval of funding.

In addition, IHCD will impose a \$1,500.00 fee to modify any legal documents.